

Discussion and Traversal of the Restriction Requirement

The Examiner has required restriction to one of the following Groups:

- I. Claims 1-19 drawn to a process for the preparation of a compound of formula 1...
- II. Claims 20-24...for the preparation of a compound of formula 4...
- III. Claims 25-27...for the preparation of a compound of formula 5...
- IV. Claims 29 and 30 drawn to a method of treating a disease...and
- V. Claims 28 and 31-35 drawn to compounds and compositions... (Office Action at 2).

The Examiner has further required, where an election of any one of Groups I to V is made, an election of a single compound. (Office Action at 5).

The Examiner asserts that, "Each Group listed above [is] recognized in the art as being distinct from one another because of their diverse chemical structure, their different chemical properties, modes of action, different effects and reactive conditions." (Office Action at 3).

Notwithstanding the Examiner's assertions, Applicants respectfully traverse this restriction requirement.

Even though the inventions of the Examiner's Groups I to V may be patentably distinct, this is not the sole criterion for a proper restriction requirement. For example, there must also be a serious burden on the Examiner to search and examine all claims. (MPEP 803).

All of the processes, methods of treatment, and products of the present invention prepare, derive from, or utilize a compound of formula 1. Thus, a search for any of the claimed inventions of the Examiner's Groups I to V would necessarily encompass a search for all. Accordingly, there is no serious burden on the Examiner to search all inventions of the Examiner's Groups I to V.

Accordingly, Applicants respectfully request reconsideration and withdrawal of the restriction requirement.

Election

In order to comply with the requirements of 37 C.F.R. § 1.143, Applicants provisionally elect, with traverse, and should the Examiner's Restriction Requirement be made final, the invention of Examiner's Group I, i.e., Claims 1 to 19 drawn to a process for the preparation of a compound of formula 1.

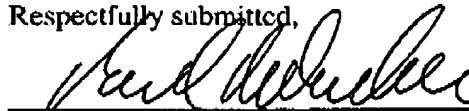
To comply with the Examiner's requirement of an election of a single compound, Applicants further elect, with traverse, the compound which is Product IV found, for example, at pages 9 and 10 of the specification, and which is recited in the process of claim 15, i.e., bis(2,2,2-trichloroethyl)(5S)-5-acetylamino-9,10,11-trimethoxy-6,7-dihydro-5H-dibenzo[a,c]cyclohepten-3-ylphosphate. Process claim 15 is dependent upon claim 1.

The elected compound is a product of general formula 1, wherein R1 and R2 are substituted alkyl, and is encompassed by claim 1, claims 2 to 5, 11 to 14, and 17 to 19, which are all dependent upon claim 1. The elected compound is encompassed by claim 6 wherein R1 and R2 are halogenated aliphatic groups; by claim 7 wherein the halogenated aliphatic group is a carbonaceous chain, and in that it comprises at least one halogen selected from the group consisting of chlorine, bromine and iodine (in this case chlorine); by claim 8, wherein the carbonaceous chain comprises a perhalogenated free terminal portion (in this case perchlorinated); by claim 9, wherein R_{Cl} is a perchlorinated residue; by claim 10 wherein R1 and R2 are each a 2,2,2-trichloroethyl substituent. As indicated above, the elected compound is specifically named in claim 15; and is the product resulting from reacting the specifically named intermediates of claim 16.

In view of the present amendment and remarks, Applicants submit that the invention as defined by the claims of the present application is novel and non-obvious over the prior art, and complies with the provisions of 35 U.S.C. § 112. Therefore, allowance and passage to issue of Claims 1 to 35 are respectfully requested.

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Respectfully submitted,



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